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THE FIRST ANNUAL REPORT

OF THE ADVISORY COMMITTEE ON

LEGAL AID IN ONTARIO

TO THE HONOURABLE ARTHUR A. WISHART, Q.C.,

MINISTER OF JUSTICE AND

ATTORNEY GENERAL FOR ONTARIO

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THE HONOURABLE ARTHUR A. WISHART, Q.C.,
Minister of Justice and
Attorney General for Ontario,
Parliament Buildings,
Toronto 2, Ontario.

Dear Mr. Attorney:

Pursuant to the provisions of *The Legal Aid Act, 1966*, I have the honour to present the First Report of the Advisory Committee on Legal Aid for Ontario, being its Report for the year ending March 31st, 1968.

Yours truly,

JOHN W. BROOKE,
Chairman.

December 23rd, 1968.

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Q.C., MINISTER OF JUSTICE AND ATTORNEY
GENERAL FOR ONTARIO.

1968

1. On the 12th day of June, 1968, pursuant to Section 91 of *The Legal Aid Act, 1966*, you appointed the following persons members of the Advisory Committee on Legal Aid:

The Honourable Mr. Justice Brooke (Chairman)
His Honour Judge A. R. Willmott
His Honour Judge Johnstone L. Roberts
George E. Wallace, Q.C.
Francis E. Wigle, Q.C.
Patrick S. FitzGerald, Q.C.
Elliott Stedelbauer, Esq.
Professor Charles E. Hendry

2. On the 3rd day of October, 1968, your Committee received for its consideration the Annual Report of The Law Society of Upper Canada (hereinafter called the Law Society) on The Ontario Legal Aid Plan for the year ending March 31, 1968, which report was made pursuant to Section 10 of the statute.

3. In the circumstances, your Committee in fulfilling its obligation under Section 9 (3) (a) of *The Legal Aid Act* relies heavily upon the information contained in the first Annual Report of the Law Society of Upper Canada as to the operation of the Plan.

4. *The Legal Aid Act, 1966*, was passed by the legislature on the 28th of June, 1966. The Act came into force on the 29th of March, 1967 and at the same time Regulation 100/67 as passed by the Law Society and approved by the Lieutenant Governor in Council became effective.

There was no amendment to the statute or further regulation passed during the first year of the operation of the Plan.

5. The report of the Law Society is a report with respect to the first year of the operation of the Legal Aid Plan commencing the 1st of April, 1967, to and including March 31, 1968, and it contains the information required of the Law Society by Section 10 of the statute, being:

"(a) A statement of the nature and amount of Legal Aid given during the year;

- (b) A statement of the receipts and disbursements of the fund during the year;
- (c) A copy of the auditor's report for the year;
- (d) General information as to the working of this Act and the Regulation".

It is not suggested that information was requested as anticipated under Section 10, Subsection (e).

6. Generally, the report contains a statement of the background of the legislation and regulation, a statement as to the operation of the Plan for the year in question and it identifies the men and women in this Province who worked in preliminary studies which were the foundation of the Plan and those who discharged the responsibility for the administration of the Plan during the year under consideration. In addition, it includes a useful number of appendices which further explain the services provided under the Plan with some information as to their costs.

7. We record our opinion that the report of the Law Society is a most comprehensive one having regard to the information then available. In addition, in going beyond what is required by Section 10 of the Act, the report will serve to remind you and the public of the extensive research which culminated in the Report of the Joint Committee on Legal Aid. This latter is the foundation of the Plan embodied in *The Legal Aid Act, 1966*, and Regulation thereto.

In the view of this Committee the scholarly Report of the Joint Committee on Legal Aid together with the experience gained under the present Plan, will be of value in all jurisdictions concerned with this important aspect of the administration of Justice.

8. Some may contend that the experience revealed by the Report of the first year's operation of the Plan is not entirely as expected by the authors of the Joint Committee Report. If there is any such disparity, it is the view of this Committee that the failure to predict does not reflect any want of careful consideration before the Plan was implemented. The Plan is an unique one and may well develop in some aspects in a manner which is not entirely predictable. Because the Plan is an unique one it is important that you and the public should appreciate that, to date, its most informed critics are the respected and responsible citizens of Ontario who have been charged with the duty and have borne the responsibility for the activation and administration of the Plan. These persons are the elected governing body of the Law Society who, together with the Director of Legal Aid, and the Area Directors and the Welfare workers carry out the day to day administration of the Plan. A number of these persons have publicly addressed themselves to the Plan both prior to its inception and since.²

²Report of the Joint Committee on Legal Aid: J. D. Arnup, Q.C. (The Law Society Gazette), G. A. Martin, Q.C. (Canadian Bar Journal Nov. 1967), Andrew Lawson, Esq. (Feb. 1968).

9. We believe that recognition must be given to the speed and efficiency with which the complex organization necessary to put this important program into effect across Ontario was achieved. On the day fixed for the coming into force of the legislation, Legal Aid under the Plan was available to those in need of assistance through duty counsel in the Magistrate's Courts and through offices in each of the 46 areas into which the Province was then divided. It is our view that the Legal Aid Plan has in its first year served the public of Ontario very well by providing assistance to some 118,678 persons, a figure greatly in excess of that possible under previous plans.³

10. In our opinion, it is evident that those charged with the administration of the Plan have from the outset determined to follow sound management policies.

We are impressed with the early development of systems of communications from the Area offices to that of the Provincial Director and the foresight of the use of modern electronic equipment for processing this information. The use of such equipment and its value in gathering and interpreting statistics and other data cannot help but be of vital assistance to the Law Society, the Administrator of the Plan and the Government of Ontario. We note with approval the policy of management in making use of professional consultants in the establishment of the largest Area office (York County) and the use of classification and work specification for persons to be employed there. In our view the use of independent professional consultants was a wise safeguard, having in mind the substantial expenditure of public moneys in a social service of such magnitude. In our view there is good reason for confidence in the judgment of those responsible for the administration of the Plan.

11. We wish to direct your attention to that aspect of the report which touches upon the activities of those responsible for the administration of the Plan for, in our view, it reveals that from the day upon which the Plan came into force, those persons have been diligent in its supervision and in their efforts to discern its deficiencies and to improve the Plan in its operation. The chronology of events during the first year includes three meetings of the Area Directors from across the Province to study the operation of the Plan; an investigation conducted to provide information as to the satisfaction of persons who had received assistance under the Plan and abuses, if any, by the Bar; meetings between the Program Committee of the Law Society and the Bench of the Bar, and the participation in programs of education at meetings of the Ontario section of the Canadian Bar Association and elsewhere.

12. From the above, we conclude and report to you that those charged with the administration have worked hard and wisely. They have displayed a deliberation to make the Plan work efficiently and economically.

13. The principal area of concern to the Law Society (and we share that concern) is we believe apparent from the report under consideration.

³Reference to Report of the Joint Committee on Legal Aid, pp. 16, 17 and 18.

This is the question of whether or not the underlying premise of the Plan as a contributory one is being fully implemented.

Your Committee notes that of those applicants who received Legal Aid 86% were found to be unable to make any contribution towards their legal aid costs and, further, that the remaining 14% as a group were able to make some contribution. From the latter group there was recovered in the operating year \$140,950.40. If we allot that proportion of administrative expense which the fees and disbursements paid other than to duty counsel (\$1,851,325.88) bear to the total fees and disbursements paid out (\$2,700,798.58) we may conclude that the total cost of providing services other than duty counsel was in round figures \$2,810,000.00 and thus that the proportion of the cost of this service recovered during the operating year from persons assisted other than by duty counsel (\$140,950.40) was approximately 5%. In no case does there appear to have been any commitment by an assisted person to repay 100% of such cost over a period of time.

The statement of receipts and disbursements of the Law Society which is Appendix A to the report is prepared on a cash basis and reports payment to solicitors for legal aid fees and disbursements of \$1,851,325.85, and contributions from clients, including judgments and costs awarded, totalling \$140,940.40. However, consideration must also be given when examining the whole cost of the Legal Aid Plan in relation to the public benefit, and the value of a commitment to make a contribution, to the auditor's note to Appendix A setting out the estimated accounts payable with respect to Legal Aid fees and duty counsel as at March 31st, 1968 in the sum of \$749,787.04 and accounts receivable from clients including amounts receivable on judgments and costs in the sum of \$563,182.48. Reference to Appendix E reveals that the sum of \$561,168.00 (being part of the last-mentioned sum) was due from 4,243 persons, and that approximately 44.9% of that sum was due or past due on March 31st, 1968, while the balance was payable at unspecified times in the future.

There is no analysis presently available to us to advise you in the detail which we believe this aspect of the matter deserves. We believe it is essential with respect to the two groups referred to, being those able and those unable to make a contribution, that statistical data should be acquired as to the ratio that the cost of assistance to persons in each group bears to the whole cost of the Plan and to the total cost of the legal fees and disbursements for legal aid paid out to solicitors as well as the amount, nature, extent and duration of the commitments made to make repayment to the Plan for the services furnished.

We agree with the report of the Law Society where it states at page 28 in dealing with this question:

"However as the plan becomes better known, there will, no doubt, be an increasing number of applicants who will be able to pay part of or substantially all of their costs."

However, we have serious concern as to cost in the immediate future not only directly attributable to Legal Aid fees and the administrative cost

of the Plan, but also increased costs in other areas in the administration of justice which we expect are already being and will continue to be experienced by reason of the impact of Legal Aid. A prime task of all participants is to keep the costs of Legal Aid within reasonable economic limits and this can only be achieved if possible sources of income to the Plan are continuously examined into and, particularly, if the full benefit to the public of the underlying premise of the Plan as a contributory one is insisted upon. To this end we recommend:

- (a) That a study be conducted by the Welfare Officers of the Department of Public Welfare designated by the Minister of Public Welfare under the statute in conjunction with the Law Society of Upper Canada to discern the basis of the judgment of welfare officers in determining whether or not an applicant can pay no part, some part or the whole of the cost of Legal Aid which he applies for and the sum, if any, that he is able to contribute towards the costs thereof, by re-examining the cases dealt with during the first year of the operation of the Plan and to date; to determine to what degree uniformity has been achieved in the application of the criteria which formed the basis of the judgment referred to, and policies that may have developed in assessing the criteria. In our view, this study should be a continuous one and use should be made of the data processing equipment for continued comparison by case and by area.

While the Report of the Joint Committee on Legal Aid⁴ urges that the Department of Public Welfare should not be restricted in deciding who should contribute to the cost of legal aid by pre-existing categories or financial limitations but rather should develop its own formulae, it may be that the study recommended above will either require a revision of the existing formulae or some more detailed guidelines than are contained in Section 17, Subsection 3 of *The Legal Aid Act*. We are not at the moment in a position of being able to make specific recommendations but we hope that at the time of our second Report we will have sufficiently detailed information to permit us to deal more specifically with this fundamental area of concern.

- (b) That members of the legal profession be urged to be vigilant in discerning and discouraging abuses of the Plan whether by unwarranted resort to it having regard to its underlying premise as a contributory plan, unwarranted resort to litigation, or by departure from procedures which a prudent counsel would recommend to a client if retained by one who could afford to pay his own cost of legal services.
- (c) That the public be reminded that the Plan is a contributory one and is not necessarily "free" legal aid.

⁴Report of the Joint Committee on Legal Aid: Item 7 at Page 112, "Conclusions on Eligibility of Applicant."

- (d) That in the education of students at law greater emphasis be placed upon the role of the lawyer in Legal Aid and upon the need for the continued co-operation of the legal profession to make the Plan work efficiently and economically.
- (e) Your Committee respectfully suggests that perhaps there is good cause at this time to commence an evaluation of existing legal procedures particularly in areas which tend to proliferate appearances before the Court, and also to constructively re-examine some of the suggestions in the report of the Joint Committee to determine if a broader use might be made of duty counsel in the presentation of some uncontested cases or matters before the Court. It seems probable to us that with the impact of Legal Aid and resulting increase in the use of legal services, there must necessarily be increased cost in many other areas of the administration of justice and related services which are the responsibility of the Province, and this must also be examined into and, to this end, this last suggestion is made.

From the outset the effect of a failure to keep the cost of the Plan within reasonable economic limits was suggested by a past Treasurer of the Law Society, John D. Arnup, Q.C. in his address to the mid-winter meeting of the Ontario Section of the Canadian Bar on the 3rd of February, 1968, as follows:

"Now it is my view, and I say it not dogmatically, but after due consideration, that it is for the government to decide the extent of legal aid which will be provided, not in the first instance of dollars, but in terms of the kinds of legal aid that will be provided. . . . The profession is dedicated to providing appropriate services at a modest cost and if the Province cannot afford to pay the aggregate of a full scale, across the board legal aid plan, then the government will have to cut the plan back by making the political decision that in some areas legal aid will no longer be given."

At the same meeting, The Honourable The Prime Minister of Ontario said:

"The Plan is currently undergoing appraisal and assessment by the Government and the Law Society. It may well be that there will be amendments to the statutes and to the regulations to smooth away some of the difficulties which have become apparent during these first months of experience.

I can, however, assure you and the people of Ontario that there will be no change in the basic philosophy. The objective of Legal Aid in Ontario is to ensure that everyone will enjoy the right to obtain legal advice or be represented by the counsel of his choice, regardless of financial ability to pay for counsel. However, we must keep in mind at all times that any program in which society provides protection for the basic rights of those people who cannot help themselves cannot be permitted to become too great a burden upon society. The costs of all such programs must be appraised. If costs become intolerable these programs will founder.

I am confident that the Ontario Legal Aid Plan will continue to be a success. But I suggest there is a limit to what society will bear in the way of financing social programs, regardless of their benefit. It is incumbent upon both the government and the legal profession, in a forthright expression of co-operation and partnership, to ensure that costs are held to reasonable levels. Otherwise, one of the great social advances of our time will collapse. The attitude and conduct of the profession is extremely important. Great care must be taken to ensure that Legal Aid will not be regarded as "Legal care" in which everyone has a right and entitlement to subsidize counsel. Legal Aid is designed to help those who need to be helped. This must be borne in mind by government, the legal profession and the people of Ontario if the Legal Aid Plan is to enjoy a long and successful future."

14. In the performance of our duty to the public with respect to the expenditure of public funds we have examined the statement of receipts and disbursements of the Law Society which is Appendix A to its Report, and we have obtained further information with respect to it from the Director of Legal Aid and the Comptroller of the Plan.

In our view, the only matter with which we need deal at any length, the others being self-explanatory or being fully explained in the Report of the Law Society, is that of salaries and temporary staff shown as administrative expenses.

As you know, save for the welfare officers, all persons employed in the administration of the Legal Aid Plan are employees of the Law Society of Upper Canada and we find that there were as of March 31st, 1968, some 172 persons so employed as follows:

The office of the Director of Legal Aid at Toronto may be conveniently dealt with in 2 sections:

- (1) General Administration. In this section there are employed the Director, the Comptroller and 24 other persons including a Collection Manager, accountant, secretaries, data processors and clerks. The annual salary range for these 24 persons is from \$2,860.00 to \$6,500.00.
- (2) The Legal Accounts Office. Employed in this section were the Legal Accounts Officer, Assistant Legal Accounts Officer and 21 other persons including secretaries and accounts clerks. The annual salary range for these 21 persons is from \$3,380.00 to \$5,200.00.

The York County Area Office. This office is the largest of the Area Offices and it is located at the City of Toronto. There were employed there at the relevant date the Area Director, Deputy Director, Assistant to the Director, Administrative Officer, 3 full-time solicitors and 21 other persons including secretaries, stenographers and law clerks. The annual salary range for these 21 persons is from \$2,860.00 to \$6,500.00.

The annual salaries for the senior positions and professional persons employed in a professional capacity at both the Provincial Office and the York County Area Office range from \$9,600.00 to \$18,000.00. There is but one person in the employment of the Law Society in the administration of the Plan who is in receipt of an annual salary of \$18,000.00, and no person employed by the Law Society in the administration of the Plan is in receipt of an annual salary in excess of that sum.

All of the persons employed at the office of the Director of Legal Aid at Toronto and the York County Area Office are full-time employees.

The remaining 45 Area Offices. In each of these offices there is an Area Director. In 37 Area Offices the Area Director is a solicitor and is retained on a part-time basis. The annual remuneration for this group ranges from \$3,200.00 to \$10,000.00. In one Area Office there is a full-time Assistant to the Director whose annual salary is in the neighbourhood of \$7,000.00. In the remaining 8 offices the Area Director is not necessarily a solicitor but is a person who has extensive experience with the courts and the administration of justice and here the annual remuneration ranges from \$1,500.00 to \$3,000.00.

In the 45 Area Offices referred to there are 51 other persons employed being 34 full-time secretaries, 12 part-time secretaries and 5 stenographers. The annual salaries for the first and the last group range from \$2,880.00 to \$5,200.00. The part-time personnel, in the main, are persons employed by legal firms in the community which firms have entered into arrangements with the Area Director to share the annual salary for the part-time employee and this salary is based on the annual sum of \$5,200.00.

We are satisfied that the above arrangements for annual remuneration and salaries which were made at the commencement of the first year of the Plan were adequate in the then circumstances.

We report to you that the scale of remuneration for those charged with executive responsibility of managing this complicated and widespread organization cannot be criticized for being excessive. The scale of salaries for office personnel appears for the moment to be within currently accepted limits.

We recommend that there be a continuous study conducted by the Law Society with the co-operation of your office to assure that the remuneration or salaries of those so engaged is not only fair by contemporary standards, but such that will attract and retain competent persons who one can expect would make a career in this important public service.

We report to you that a disbursement in the sum of \$18,743.62 for temporary staff was paid to persons employed on a temporary basis to meet peak-load office requirements.

In our examination of the Statement of Receipts and Disbursements appended to the Report of the Law Society we note that it contains the total figures paid out to solicitors either as duty counsel or for other legal aid. The distribution of these moneys is carefully set out in the appendices to the Law Society Report. Before any of these moneys are paid out the account of the solicitor who rendered the service must be taxed according to the scale and procedure set out in *The Legal Aid Act*. Your Committee, upon the examination of the procedures and enquiry as to the personnel charged with the responsibility of carrying out the procedures, is satisfied that the Law Society has devised an effective system of examining and checking these accounts and that you can be assured that the sums paid out have been for services properly chargeable under the Act and that the public purse has been adequately safeguarded in this respect.

15. We conceive it to be our function during this second year in which the Plan has operated to strive to keep ourselves informed through regular meetings with those groups of persons charged with the responsibility for the administration of the Plan, so that we will be better able to form an independent judgment as to its operation during that year and add constructively to the information available to you, through our report and that of the Law Society in assessing the value of the Legal Aid Plan to the people of Ontario.

All of which is respectfully submitted.

JOHN W. BROOKE

A. R. WILLMOTT

JOHNSTONE L. ROBERTS

GEORGE E. WALLACE

FRANCIS E. WIGLE

P. S. FITZGERALD

ELLIOTT STEDELBAUER

CHARLES E. HENDRY

